

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ADMINISTRATIVE CONDITIONAL USE PERMIT
#FACU-21-86 CHERRY HILL LODGE LLC
DECEMBER 21, 2021**

I. GENERAL INFORMATION

A. General Description

This is a report regarding a request by Cherry Hill Lodge LLC for an administrative conditional use permit for a property located within the Bigfork Zoning District. The applicant is requesting a permit to allow short-term rental housing within the single-family dwelling on a property located at 9248 Highway 35 in Bigfork, MT.

B. Application Personnel

i. Applicant/Property Owner

Jeanne Bayer, Cherry Hill Lodge LLC
10 Marsh Road
Tiburon, CA 94920

ii. Property Manager*

Dalon Pobran
406-396-0780

* Section 5.11.060 FCZR requires all short-term rental housing have a name and number of a contact person or property management company that shall be available 24 hours a day, 7 days a week and be able to arrive at the property within one hour should an emergency or problem arise. The applicants will be required to send this information via certified mail to all neighbors within 150 feet prior to operating the short-term rental housing.

C. Process Overview

1. Land Use Advisory Committee/Council

The proposed land use is not located within the jurisdiction of a Land Use Advisory Committee (LUAC).

2. Board of Adjustment

The Flathead County Board of Adjustment will conduct a public hearing on the proposed conditional use permit on January 4, 2022, at 6:00 P.M. in the Second Floor Conference Room of the South Campus Building located at 40 11th Street West in Kalispell, MT. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, located on the second floor of the South Campus Building.

II. PROPERTY CHARACTERISTICS

A. Property Location and Size

The subject property is located at 9248 Highway 35, Bigfork, MT (see Figure 1 below). The property is approximately 3.65 acres and can be legally described as Tract 1CB & Tract 1FD in Section 12, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property outlined in yellow



B. Existing Land Use(s) and Zoning

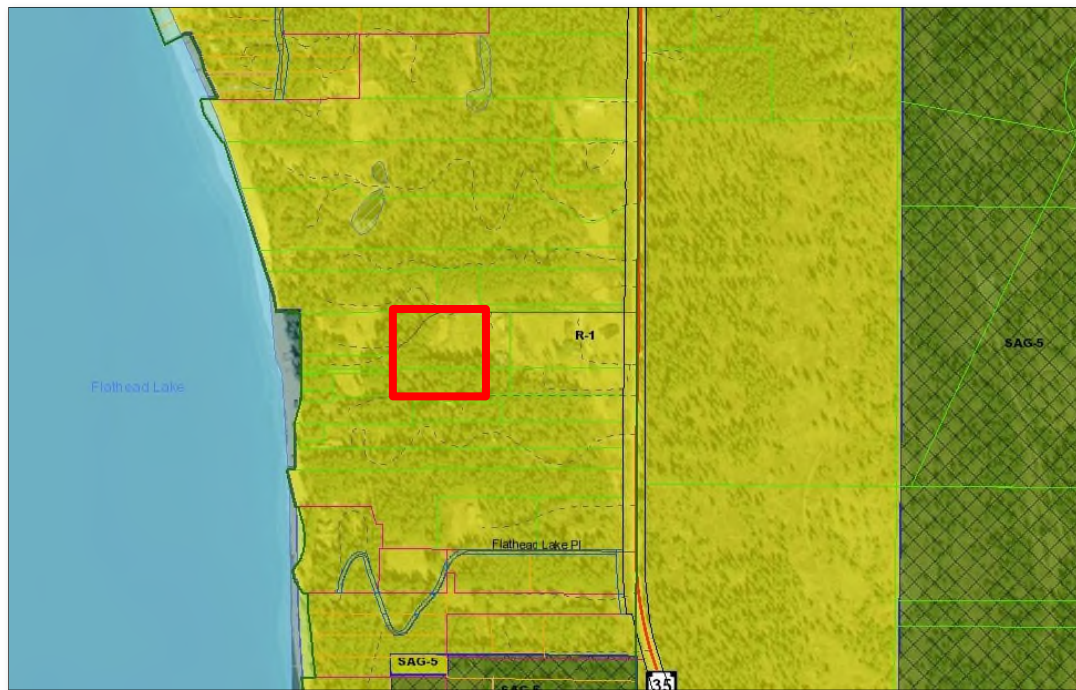
The subject property currently contains a single-family dwelling, detached garage, and several outbuildings. The property is located within the Bigfork Zoning District and is zoned 'R-1 Suburban Residential'.

The R-1 zone is defined as, 'A district to provide estate-type development. These areas would normally be located in rural areas away from concentrated urban development, typically not served by water or sewer services, or in areas where it is desirable to permit only low-density development (e.g., extreme topography, areas adjacent to floodplains, airport runway alignment extensions).'

C. Adjacent Land Use(s) and Zoning

The adjacent surrounding properties are primarily residential and are similarly zoned 'R-1 Suburban Residential' (see Figure 2 below).

Figure 2: Zoning surrounding the subject property (property outlined in red)



D. Summary of Request

The applicant is requesting an administrative conditional use permit to allow for short-term rental housing within the existing single-family dwelling.

Pursuant to Section 3.10.030 of the Flathead County Zoning Regulations (FCZR), ‘Short-term rental housing’ is listed as an administrative conditional use in the R-1 zoning, and Section 5.11 FCZR outlines applicable conditional use standards for *Short-term rental housing*. According to the definition found Section 5.11.010 FCZR, Short-term rental housing is defined as “*a residential use in a dwelling unit designed for such use for periods of time less than 30 days. Short-term Rental Housing may be referred to as vacation rentals or resort dwelling units.*”

Due to the comments received in opposition to the application, it was determined that this file would be heard by the Board of Adjustments, per Section 2.06.045 (5) of the Flathead County Zoning Regulations (FCZR), “*When written opposition from any person is received prior to the end of the comment period and the expressed concerns of the opposition specifically states how the request would adversely or injuriously affect their personal or legal interests and cannot be resolved by the applicant or by conditions of approval, the Administrative Conditional Use Permit will be scheduled for the next available Board of Adjustment meeting for a decision.*”

III. COMMENTS RECEIVED

A. Agency Comments

1. Agency referrals were sent to the following agencies on October 29, 2021:
 - Flathead City-County Health Department – Environmental Health Services
 - Bigfork Fire District
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department – Environmental Health Services
 - Comment: “This office has no objection to operation of a tourist home at the above-referenced property. Based on the sizing of the septic system (permit dated 9-24-1973), the maximum occupancy of the tourist home is limited to six (4) people (2 people/bedroom).
 - Operation of a tourist home in the State of Montana requires licensure under Title 50-51-201 MCA, as a public accommodation.
 - Operation of the tourist home must be compliant with Montana ARM 37.111.1.
 - Operation of the on-site water supply must comply with Food and Consumer Safety Circular 1-2012-Standards for Nonpublic Water Supplies Serving Licensed Establishments.” Letter received November 15, 2021

B. Public Comments

1. Notification was mailed to property owners within 150 feet of the subject property on October 29, 2021. Pursuant to Section 2.06.045(2) FCZR, a 15-day comment period is required before an administrative conditional use permit may be issued.

2. **Public Comments Received**

Within the required 15-day comment period established under Section 2.06.045(2) FCZR, this office received five (5) written public comments regarding the proposed use on the subject property. The written comments primarily addressed concerns regarding a judgement and permanent injunction, road maintenance, noise, trespassing, commercial nature of the proposed use, and previous experiences with renters in the neighborhood.

The concerns regarding the road and noise are addressed under the applicable sections of this staff report as they pertain to the review criteria for conditional use permits. According to the County’s legal review, the judgement and permanent injunction affecting the subject property does not prohibit use of the property for residential purposes, including short-term rental housing.

Since the file will be sent to the Flathead County Board of Adjustment for a public hearing, notification was mailed to property owners within 150 feet of the subject property on December 15, 2021, pursuant to Section 2.06.040(3) FCZR and legal notice of the public hearing on this application was published in the December 19, 2021, edition of the Daily Interlake. All neighbors will be allowed to submit additional written public comment until 5:00pm on the night of the public hearing and provide oral comments during the public hearing. Any written public comments and public comments made during the public hearing will be considered by the Board of Adjustment prior to a decision regarding this application.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.06.045(3) of the Flathead County Zoning Regulations, an administrative conditional use permit shall be evaluated using the same criteria outlined in Section 2.06.080 for conditional use permits. What follows are the criteria required for consideration and suggested findings of fact based on review of each criterion.

A. Site Suitability

i. Adequate usable space

The applicant is not proposing to construct any additional buildings as part of this request. The subject property is 3.65 acres and zoned R-1 which has a permitted lot coverage of 40%. According to Montana Cadastral, the single-family dwelling has a footprint of 2,296 square feet, the attached garage has a footprint of 576 square feet, and the outbuildings have a combined footprint of 1,242 square feet. The total lot coverage of the structures is 4,114 square feet, which covers 2.6% of the lot.

The setback requirements within the R-1 zone are 20 feet from front, side, side-corner, and rear property lines for the principal structure. The setback requirements for detached accessory structures are 20 feet from front and side-corner property lines and 5 feet from side and rear property lines. An additional setback of 20 feet is required from streams, rivers, and unprotected lakes which do not serve as property boundaries. According to the site plan, the structures meet the setback requirements.

Based upon staff's site visit and the application materials, it appears the subject property has adequate useable space to accommodate short-term rental housing.

ii. Adequate access

The subject property is accessed by an unnamed private, gravel road within a 30 foot wide easement via Highway 35. Highway 35 is a public, paved road within a 60 foot wide right-of-way. The driveway approach appears to have adequate sight distances onto the primary access road. Since the property has legal and physical access for the existing residential use, it would appear that there is sufficient access for short-term rental housing.

iii. Absence of environmental constraints

According to FEMA Flood Insurance Rate Map (FIRM) Panel 30029C2315J, the property is located within Zone X, which is an area determined to be outside the 0.2% annual chance flood. The property does not appear to contain any streams, wetlands, or riparian areas. The applicant is not proposing to construct any additional structures or make alterations to the existing structures as part of this proposal, therefore impacts on the environment will likely be minimal.

Finding #1 – The subject property appears suitable for the proposed use because the structures meet the applicable setback and lot coverage requirements of the R-1 zone, the property has access via an existing road, and the applicant is not proposing to construct any new structures or make any alterations to the existing structures.

B. Appropriateness of design

i. Parking scheme

According to Section 6.02.010 FCZR, a single-family dwelling requires two parking spaces per dwelling unit. Thus, a total of two parking spaces is required for the structure. The application indicates the driveway and garage can accommodate parking for four vehicles. Based on staff's site visit, the proposed parking area appears adequate to accommodate the short-term rental housing.

ii. Traffic circulation

The subject property is accessed by an unnamed private, gravel road within a 30 foot wide easement via Highway 35. Internal traffic circulation on the property is provided by a gravel driveway adjacent to the attached garage. As the proposed use is residential in nature, the driveway and adjacent roadway appear to provide adequate traffic circulation to and within the subject property.

Finding #2 – The parking and traffic circulation appears appropriate because the subject property is able to meet the minimum parking requirement of two parking spaces per dwelling and the existing road and driveway provide adequate traffic circulation for residential use.

iii. Open space

The applicant is not proposing to construct any additional buildings as part of this request. According to Montana Cadastral, the existing structures have a footprint of 4,114 square feet, which covers 2.6% of the lot. Based upon staff's site visit and the application materials, it appears the subject property has adequate open space.

iv. Fencing/screening

The subject property currently contains open rail fencing on a portion of the lot. The property is forested and partially screened along the south and west boundary lines. The applicant is not proposing any additional fencing or screening as part of this application. The zoning regulations do not require fencing or screening for short-term rental housing and no fencing or screening is required as a condition of approval.

v. Landscaping

The subject property is partially forested with open lawn space adjacent to the single-family dwelling. The applicant is not proposing additional landscaping as part of this application. No landscaping is specifically required for short-term rental housing and no landscaping is required as a condition of approval.

vi. Signage

The subject property currently contains address numbers. No additional signage is proposed. Section 5.11.050 FCZR states "*No additional signage on the property is allowed other than typical address numbers.*" The permit will be conditioned to require no additional signage other than typical address numbers.

vii. Lighting

The property currently contains residential lighting on the exterior of the structures which appears to conform to the zoning requirements. The applicant is not proposing additional lighting. Any future lighting would be required to adhere to Section 5.12 of FCZR.

Finding #3 – The proposed use is appropriate for the subject property because there is adequate open space, the applicant is not proposing to install additional fencing, screening, landscaping, signage, or lighting, and the existing signage and lighting complies with the standards outlined in the Flathead County Zoning Regulations.

C. Availability of Public Services and Facilities

i. Sewer

The application indicates the property is served by a septic system. Comment from the Flathead City-County Health Department states, “This office has no objection to operation of a tourist home at the above-referenced property. Based on the sizing of the septic system (permit dated 9-24-1973), the maximum occupancy of the tourist home is limited to six (4) people (2 people/bedroom).” The septic system appears adequate for the proposed use with the imposition of conditions.

ii. Water

The application indicates the property is served by a well. Comment from the Flathead City-County Health Department states, “Operation of a tourist home in the State of Montana requires licensure under Title 50-51-201 MCA as a public accommodation. Operation of the tourist home must be compliant with Montana ARM 37.111.1. Operation of the on-site water supply must comply with Food and Consumer Safety Circular 1-2012-Standards for Nonpublic Water Supplies Serving Licensed Establishments.” The proposed use will require review for a public accommodation license to ensure compliance with the applicable regulations.

iii. Storm Water Drainage

Storm water runoff on the subject property appears to be handled through onsite absorption. No new impervious cover is proposed with this application and the storm water drainage appears appropriate.

Finding #4 – The subject property appears to have adequate availability of sewer, water, and storm water drainage facilities because the property would be served by the existing septic system and well, the occupancy would be limited to four (4) guests based on the size of the septic system, the applicant will be required to obtain a public accommodations license, and no new impervious cover is proposed.

iv. Fire Protection

The subject property is located within the Bigfork Fire District and approximately 2.7 driving miles north of the Bigfork Fire Department. The property is located within the Wildland Urban Interface (WUI) but is not located in a Countywide Priority Area. The Bigfork Fire District did not comment on the application. Due to the proximity of the property to the local fire department, it is anticipated response times would be acceptable in the event of an emergency.

v. Police Protection

The subject property is located in an unincorporated area of the County and is therefore served by the Flathead County Sheriff’s Office. Acceptable response times are anticipated in the event of an emergency due to the property’s location in a relatively urbanized area of the County.

vi. Streets

The subject property has legal and physical access via an unnamed, private, gravel road within a 30 foot wide easement via Highway 35. Highway 35 is a public, paved road within a 60 foot wide right-of-way.

Finding #5 – The subject property appears to have adequate availability of public services for the proposed use because the property is served by the Bigfork Fire Department and the Flathead County Sheriff’s Office, and the property is accessed from an unnamed, private, gravel road within a 30 foot wide easement.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

The subject property is located along a private, gravel road. Several of the written public comments indicated concern regarding traffic and impacts on the privately-maintained road. Because the rental will be limited in the number of maximum occupants, general short-term rental of the property will result in traffic generation similar to other single-family dwellings in the area.

ii. Noise or vibration

While short-term rental guests may at times generate outdoor use, it will generally be similar to noise from surrounding residential lots, especially since the rental will be limited to four guests at one time. The applicant is proposing quiet hours after 10:00 PM.

The standards listed in Section 5.11 FCZR require the property owner to send the name and phone number of a contact person via certified mail to neighbors within 150 feet of the subject property. The contact person must be able to arrive at the subject property within one hour and be available 24 hours a day, seven days a week. This condition will be imposed and verified.

Finding #6 – The proposed use is not anticipated to have a significant impact on the immediate neighborhood from excessive traffic, noise, or vibration because the total occupancy will be limited which will keep traffic generation similar to other single-family dwellings in the area and minimize the impacts from noise and vibrations created by guests, and any impacts would be mitigated by the property manager.

iii. Dust, glare or heat.

The proposed use is not anticipated to generate dust, glare, or heat. The use of the short-term rental will be residential in nature and impacts from glare or heat will be in line with those of other residential uses within the neighborhood.

iv. Smoke, fumes, gas, or odors

The proposed use is not anticipated to generate smoke, fumes, gas, or odors. The use of the short-term rental will be residential in nature and impacts from smoke, fumes, gas and odors will be in line with other residential uses within the neighborhood.

v. Inappropriate hours of operation

The proposed short-term rental housing will be utilized by guests typically for stays of 30 days or less. Because the use is residential in nature there are no hours of operation. The application states, “We will require occupants to observe normal hours of operation with quiet periods overnight to prevent any noise or disturbance to neighbors.”

Section 5.11.110 FCZR indicates the short-term rental “*is subject to suspension or revocation should any ... standards and any additional conditions of approval not be met, or if there are substantive and valid complaints of disturbances of the peace or health and safety violations related to the operation of Short-term Rental Housing.*”

Finding #7 – The proposed use is not anticipated to have a significant impact on the immediate neighborhood because no dust, glare, heat, smoke, fumes, gas, or odors in excess of what is anticipated for residential use is expected, and there are measures in place to mitigate impacts.

V. SUMMARY OF FINDINGS

1. The subject property appears suitable for the proposed use because the structures meet the applicable setback and lot coverage requirements of the R-1 zone, the property has access via an existing road, and the applicant is not proposing to construct any new structures or make any alterations to the existing structures.
2. The parking and traffic circulation appears appropriate because the subject property is able to meet the minimum parking requirement of two parking spaces per dwelling and the existing road and driveway provide adequate traffic circulation for residential use.
3. The proposed use is appropriate for the subject property because there is adequate open space, the applicant is not proposing to install additional fencing, screening, landscaping, signage, or lighting, and the existing signage and lighting complies with the standards outlined in the Flathead County Zoning Regulations.
4. The subject property appears to have adequate availability of sewer, water, and storm water drainage facilities because the property would be served by the existing septic system and well, the occupancy would be limited to four (4) guests based on the size of the septic system, the applicant will be required to obtain a public accommodations license, and no new impervious cover is proposed.
5. The subject property appears to have adequate availability of public services for the proposed use because the property is served by the Bigfork Fire Department and the Flathead County Sheriff’s Office, and the property is accessed from an unnamed, private, gravel road within a 30 foot wide easement.
6. The proposed use is not anticipated to have a significant impact on the immediate neighborhood from excessive traffic, noise, or vibration because the total occupancy will be limited which will keep traffic generation similar to other single-family dwellings in the area and minimize the impacts from noise and vibrations created by guests, and any impacts would be mitigated by the property manager.
7. The proposed use is not anticipated to have a significant impact on the immediate neighborhood because no dust, glare, heat, smoke, fumes, gas, or odors in excess of what is anticipated for residential use is expected, and there are measures in place to mitigate impacts.

VI. CONCLUSION

Upon review of this application, the request to allow for short-term rental housing is supported by the Findings of Fact listed above or can be conditioned to adequately mitigate

concerns. The Zoning Administrator therefore approves the administrative conditional use permit for the short-term rental, subject to the following conditions:

VII. CONDITIONS OF APPROVAL

1. The short-term rental housing shall be in substantial conformance with the application submitted and approved by the Flathead County Zoning Administrator; changes or modifications to the approved use and/or site plan as proposed by this application shall not be affected unless specifically reviewed and approved by the Zoning Administrator as an amendment to this permit.
2. The short-term rental housing shall be located in accordance with the minimum bulk and dimensional requirements of the R-1 zoning designation, pursuant to Section 3.10.040 of the Flathead County Zoning Regulations.
3. The short-term rental housing shall be used solely for the purpose defined in Section 5.11.010 of the Flathead County Zoning Regulations.
4. No signage may be established on the property to advertise the short-term rental housing.
5. Lighting on the subject property shall adhere to the performance standards set forth in Section 5.12 of the Flathead County Zoning Regulations.
6. The maximum occupants on the property shall be limited to **four (4)** at one time.
7. The contact information for the local contact person or management company shall be sent via certified mail by the applicant to all property owners within 150 feet of the property applying for Short-term rental housing. A copy of the certified mail receipt shall be submitted to Flathead County Planning and Zoning prior to the expiration date of this permit.
8. The applicant shall provide at least two (2) parking spaces for the short term rental housing as required under Section 6.02.010 of the Flathead County Zoning Regulations and all parking shall be met off-street.
9. The proposed use shall be reviewed by the Flathead City-County Department of Environmental Health in order to obtain a State of Montana Public Accommodation License for the short term rental housing. A copy of the approved license shall be submitted to Flathead County Planning and Zoning prior to the expiration date of this permit.
10. The property owner is responsible for collecting the State Bed Tax and conveying those monies to the State of Montana Department of Revenue.
11. At the end of twelve (12) months from the date of authorization of this permit staff will inspect to verify compliance [FZCR Section 2.06.060]. Prior to advertising or operating the dwelling as a short-term rental, all the above conditions are required to be met.
12. The conditional use permit shall terminate twelve (12) months from the date of authorization if commencement of the activity has not begun, unless the applicant can demonstrate and maintain a continuous effort in good faith in commencing the activity. [FCZR Section 2.06.060].

13. If there are three verified violations within a two-year period, the permit shall be suspended for a period of one year.
14. The applicant must meet with the Bigfork Fire District to come up with an acceptable risk management plan.

Planner: EA